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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,639	10/15/2003	David Crist Gabriel	81047492 / 201-0035	2638
28395	7590	02/14/2005	EXAMINER	
BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			PANG, ROGER L	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/605,639

Applicant(s)

GABRIEL ET AL.

Examiner

Roger L Pang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,5-7 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,5-7,21 and 22 is/are allowed.
- 6) ☒ Claim(s) 15,16,19 and 20 is/are rejected.
- 7) ☒ Claim(s) 17-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The following action is in response to the amendment filed for application 10/605,639 on December 27, 2004.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on December 27, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent 6,682,458 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15-16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishioka. With regard to claim 15, Nishioka teaches a method for operating a vehicle having a component to be regulated, the method comprising: determining a temperature difference between a current component temperature and a predetermined temperature (Col. 5); calculating a time CH for the component temperature to reach the predetermined temperature, the time calculation being based on a predetermined component temperature gradient and the determined temperature difference (Col. 5); and regulating operation of the component based on the

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calculated time (Fig. 3). With regard to claim 16, Nishioka teaches the method, wherein the component to be regulated is one of an electric motor, an internal combustion engine (Col. 1), a fuel cell, and a transmission. With regard to claim 19, Nishioka teaches the method, further comprising indicating when the operation of the component is regulated based on the calculated time, the regulation being perceivable by a vehicle operator Q11.

Claim 15 is rejected under 35 U.S.C. 102(e) as being anticipated by Kyrtos. With regard to claim 15, Kyrtos teaches a method for operating a vehicle having a component to be regulated, the method comprising: determining a temperature difference between a current component temperature and a predetermined temperature 120; calculating a time for the component temperature to reach the predetermined temperature, the time calculation being based on a predetermined component temperature gradient and the determined temperature difference 130; and regulating operation of the component based on the calculated time 150.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kyrtos as applied to claim 15 above. Kyrtos teaches the method, wherein a predetermined component temperature gradient is a stored function based on previous operation of the component (said operation being tested, and the information thereby stored in table 136).

***Allowable Subject Matter***

Claims 1, 5-7, and 21-22 allowed.

Claims 17-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

With regard to the Nishioka reference, applicant argues:

- 1) there is no temperature difference being used
- 2) there is a lack of a predetermined component temperature gradient.
- 3) the alarm temperature should be taken instead of the coolant temperature, in order to cover the claim limitations

Response:

- 1) Nishioka teaches a predetermined temperature  $\theta_{ep}$  and testing a current temperature  $\theta_{ea}$ . The difference between the temperatures is used to determine the time it will take to reach the predicted threshold temperature.
- 2) Said difference in the response above is used to find a corresponding time to reach the predicted temperature on the gradient of the cooling water temperature (Col. 5).
- 3) The “component” is being interpreted as an “engine cooling system” which comprises the vehicle engine 1 (thereby covering claim 16), and “regulation” is being interpreted as any action, which in this case is an alarm. The cooling system is regulation is performed as activation of an alarm, and the engine is treated as part of the cooling system.

Applicant's arguments have been considered, but are not persuasive.

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With regard to the Kyrtos reference, applicant argues:

- 1) the temperature of the cooling and heating system should be taken instead of the cabin temperature.

Response:

- 1) With regard to Kyrtos, the “component” is being interpreted as “the vehicle climate system” which comprises the cabin and heating/cooling system. Therefore the system is being regulated in a manner to reach a desired temperature, and the temperature of the cabin is considered part of the system.

Applicant’s arguments have been considered, but are not persuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### FACSIMILE TRANSMISSION

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is (703) 305-3597. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check.

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Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3597) on \_\_\_\_\_ (Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_  
\_\_\_\_\_

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roger L Pang whose telephone number is 703-305-0445 (571-272-7095 post move to Alexandria). The examiner can normally be reached on 5:30am to 4:00pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 703-308-0830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Roger L Pang  
Patent Examiner  
Art Unit 3681

February 10, 2005